

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERNESTO SANTIAGO,)
Plaintiff,)
v.) C.A. No. 04-335 ERIE
THE UNITED STATES OF AMERICA,) JUDGE McLAUGHLIN/
Defendant.) MAGISTRATE JUDGE BAXTER

**DEFENDANT'S MOTION FOR LEAVE TO FILE A MOTION
FOR SUMMARY JUDGMENT OUT-OF-TIME**

AND NOW, comes defendant, United States of America, by its attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Paul E. Skirtich, Assistant United States Attorney for said district, and files this Motion for Leave to File a Motion for Summary Judgement, pursuant to Rule 56 of the Federal Rules of Civil Procedure out of time.

Defendant moves the Court to enter summary judgment in favor of Defendant, upon the grounds that there is no genuine issue as to any material fact and Defendant is entitled to judgment as a matter of law.

On July 5, 2005, Magistrate Judge Baxter ordered Motions for Summary Judgement to be filed by November 8, 2005.

On October 18, 2005, Plaintiff filed his Pretrial Statement but failed to attach an expert report, in this a Medical Malpractice Federal Tort Claims Act case.

On November 2, 2005, Plaintiff testified at deposition

that he did not have a report from a medical expert.

To date, Plaintiff has failed to submit an expert report from a medical expert.

Judgement should be entered in favor of the United States on Plaintiff's complaint because Plaintiff's medical malpractice complaint fails to conform to the medical malpractice standards of Pennsylvania law. It is clear under Pennsylvania law that a plaintiff cannot sustain a claim for medical malpractice without producing a sufficient expert report or testimony. Plaintiff has failed to do so and, as such, has failed to create a genuine question of material fact.

A Memorandum of Law in support of the instant Motion and a Statement of Material Facts in support of the instant Motion are being filed simultaneously herewith and the contents therein incorporated by reference.

WHEREFORE, Defendant requests that the within Motion be granted.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

/s/ Paul E. Skirtich
PAUL E. SKIRTICH
Assistant U.S. Attorney
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(412) 894-7418
PA I.D. No. 30440

CERTIFICATE OF SERVICE

I hereby certify that on the 23th day of December, 2005, I forwarded by postage-paid First Class mail a true and correct copy of the foregoing Motion to For Summary Judgment upon the following:

Ernesto Santiago
#90304-038
Federal Correctional Institution McKean
P. O. Box 8000
Bradford, PA 16701

/s/ Paul E. Skirtich
PAUL E. SKIRTICH
Assistant U.S. Attorney

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ORDER

AND NOW, to wit, this _____ day of _____, 2005,
upon consideration of the Motion for Summary Judgment heretofore
filed by Defendant, IT IS HEREBY ORDERED that said Motion is
GRANTED.

IT IS FURTHER ORDERED that judgment is hereby entered in favor of Defendant and against Plaintiff.

IT IS FURTHER ORDERED that the Complaint of Plaintiff is hereby dismissed with prejudice.

UNITED STATES DISTRICT JUDGE

cc: All counsel of record